

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

REGAL-BELOIT CORPORATION,

Defendant.

Civil Action No. 07-CV-50002

Judge Frederick J. Kapala

CONSENT DECREE FOR RECOVERY OF RESPONSE COSTS
EVERGREEN MANOR GROUNDWATER SITE, ROSCOE, ILLINOIS

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I. BACKGROUND

A. On January 4, 2007, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), filed a Complaint in this matter against Defendant Regal-Beloit Corporation ("Regal-Beloit" or "Settling Defendant") pursuant to Sections 107 and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9607 and 9613(g)(2), as amended ("CERCLA"), concerning the Evergreen Manor Groundwater Superfund Site in Roscoe Township, Winnebago County, Illinois (the "Evergreen Manor Site" or "Site"). *See United States v. Regal-Beloit Corp.*, Civ. No. 07-CV-50002 (N.D. Ill.).

B. The United States' Complaint against Regal-Beloit seeks reimbursement of costs that have been or will be incurred by U.S. EPA and the U.S. Department of Justice for response actions at the Evergreen Manor Site, together with accrued interest, as well as a declaratory judgment that Regal-Beloit is liable for all future response costs to be incurred by the U.S. EPA in connection with the Site.

C. On May 29, 2008, the United States, on behalf of U.S. EPA, filed a Complaint against Waste Management of Illinois, Inc. and Waste Management of Wisconsin, Inc. (jointly "Waste") and Ecolab Inc. ("Ecolab"), pursuant to Sections 106, 107 and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9606, 9607 and 9613(g)(2), also concerning the Evergreen Manor Site. *See United States v. Waste Management of Illinois, Inc.*, Civ. No. 08-CV-50094 (N.D. Ill.) (May 29, 2008).

D. On May 29, 2008, the United States, on behalf of U.S. EPA, also lodged a Consent Decree ("Waste Management Consent Decree") wherein Waste, and Ecolab agreed to: (1) payment to the United States of \$550,000 for past response costs; (2) performance of injunctive relief under CERCLA Section 106, 42 U.S.C. §9606, specifically the Remedial Action, including Operation and Maintenance, at the Evergreen Manor Site consistent with U.S. EPA's Record of Decision ("ROD"), and the National Contingency Plan, 40 C.F.R. Part 300 ("NCP"); and (3) payment of the future response costs incurred by U.S. EPA that are not inconsistent with the NCP. *See United States v. Waste Management of Illinois, Inc.*, Civ. No. 08-CV-50094 (N.D. Ill.) (May 29, 2008).

E. On June 27, 2008, Regal-Beloit filed a motion with the Court in *United States v. Waste Management of Illinois, Inc.*, Civ. No. 08-CV-50094 (N.D. Ill.) (May 29, 2008) seeking an order granting it the right to intervene as a Party-Defendant in that case pursuant to Fed. R. Civ. P. 24(a) and 24(b), and 42 U.S.C. § 9613. As set forth below, Regal-Beloit, as a condition of this settlement, agrees to withdraw its motion to intervene in that case.

F. Regal-Beloit is incorporated under the laws of the State of Wisconsin and does business in the State of Illinois. Regal-Beloit is a former owner and/or operator of a steel cutting tools manufacturing business located at 5330 East Rockton Road, South Beloit, Illinois.

G. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), U.S. EPA, on September 17, 2006, notified the State of Illinois (the "State") of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and U.S. EPA has

provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

H. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), U.S. EPA notified the United States Department of the Interior on September 17, 2006, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

I. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, on or about July 28, 1998, U.S. EPA proposed the Site for listing on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, 63 Fed. Reg. 40247.

J. The United States alleges that the actions hereinafter described were taken in response to the releases and/or threatened releases of hazardous substances into the environment, at the Evergreen Manor Site, pursuant to CERCLA Section 104, 42 U.S.C. § 9604, and these response actions have included, without limitation, investigations of Evergreen Manor Site conditions and removal actions within the meaning of CERCLA § 101 (23), 42 U.S.C. § 9601(23), including the connection of 281 residences (202 residences identified as having contaminated well water, plus a contingency factor of 79 residences that are located in a buffer zone at the Site) to the North Park Public Water District, and a Remedial-Investigation and Feasibility Study ("RI/FS").

K. On or about April 1, 1999, the United States entered into an Administrative Order on Consent ("1999 AOC") with Regal-Beloit, Waste, Ecolab and the State of Illinois. Pursuant to that 1999 AOC, Regal-Beloit, Waste and Ecolab agreed

to pay \$2.1 million to U.S. EPA for the removal action to connect residences to the North Park Public Water District. U.S. EPA completed the municipal hook-up during 1999-2000. The private wells at the homes that were connected to the municipal water supply were permanently sealed.

L. Based on the information presently available to U.S. EPA, U.S. EPA believes that the response actions already performed by U.S. EPA, as well as Regal-Beloit, Waste and Ecolab pursuant to the 1999 AOC and other settlements at the Evergreen Manor Site, have been consistent with the NCP, and the response action to be performed by Waste and Ecolab pursuant to the Waste Management Consent Decree will be properly and promptly performed if conducted in accordance with the requirements of the Waste Management Consent Decree and its Appendices.

M. As a result of responding to the releases and threatened releases of hazardous substances into the environment at and from the Evergreen Manor Site, the United States has incurred at least \$1.6 million in unreimbursed response costs, excluding prejudgment interest.

N. By entering into this Consent Decree, Regal-Beloit does not admit any liability arising out of the transactions or occurrences alleged in the United States' Complaint, nor does Regal-Beloit acknowledge that there have been releases or threatened releases of hazardous substance(s) at or from the Site, nor that any alleged release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health, welfare or environment.

O. The United States and Regal-Beloit (collectively "the Parties") agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been

negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b). This Court also has personal jurisdiction over the Settling Defendant. Venue is proper in this District pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 1391(b), because the release of hazardous substances from the Site occurred in this District, and because the event or omissions giving rise to the claims herein occurred in this District. Solely for the purposes of this Consent Decree and the underlying Complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal status of Settling Defendant, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibility of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any Appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any Appendix, the Consent Decree shall control.

c. "Date of Lodging" shall mean the date that this Consent Decree is lodged with the Clerk of the Court for the United States District Court for the Northern District of Illinois.

d. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

e. "Effective Date" shall be the date upon which this Consent Decree is entered by the Court.

f. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs that U.S. EPA, or U.S. DOJ on behalf of U.S. EPA, or any other persons are paying or will pay at or in connection with the Site for Remedial Action, including Future Oversight Costs as that term is defined in the Waste

Management Consent Decree, as well as all such costs incurred after the Effective Date of this Consent Decree.

g. "U.S. EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

h. "Interest" shall mean interest at the rate specified for interest on investments of the U.S. EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

i. "Matters Addressed" in this Consent Decree shall mean all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person with respect to the Site. The 'Matters Addressed' in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendants coming within the scope of such reservations.

j. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

k. "Parties" shall mean the United States and Settling Defendant.

l. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that U.S. EPA, or U.S. DOJ on behalf of U.S. EPA, or any other persons have paid at or in connection with the Site before and including the

Effective Date of this Consent Decree, plus accrued Interest on all such costs through such date.

m. "Plaintiff" shall mean the United States.

n. "Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken at the Site by U.S. EPA or any other persons, to implement the September 20, 2003 Record of Decision ("ROD"), and all design documents and work plans approved by U.S. EPA to implement the ROD.

o. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

p. "Settling Defendant" shall mean Regal-Beloit Corporation.

q. "Site" shall mean the Evergreen Manor Groundwater Site in unincorporated Roscoe Township, Winnebago County, north of Roscoe, Illinois, containing groundwater contamination in the region's upper sand and gravel aquifer, located from the water table down to approximately 100 feet below ground. The Site consists of an industrial area near State Route 251 and north of Rockton Road encompassing Settling Defendant's business facility located at 5330 East Rockton Road, South Beloit, Illinois, and extends approximately 2 miles southwest through the Hononegah Heights, Tresemer, Olde Farm and Evergreen Manor residential subdivisions, and includes approximately one mile of open farmland between the industrial area and the residential subdivisions. The Site is depicted on the map in Appendix A.

r. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

s. "U.S. DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

t. "U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

V. GENERAL PROVISIONS

4. Objectives of the Parties. The objectives of the parties in entering into this Consent Decree are to protect public health, welfare and the environment at the Site, to reimburse response costs to the Plaintiff, and to resolve the claims of Plaintiff against Regal-Beloit as provided in this Consent Decree.

5. Recognition of Settling Defendant's Performance. U.S. EPA hereby recognizes and acknowledges that Regal-Beloit has in the past complied with the 1999 AOC which became effective with respect to the Site.

6. Settling Defendant certifies that as of the date of lodging of this Consent Decree, it does not own or operate a facility at the Site, and that it has not transported, treated, stored or disposed, or arranged for the transportation, treatment, storage or disposal of hazardous substances or solid wastes at or in connection with the Site.

VI. PAYMENT OF RESPONSE COSTS

7. a. Within 45 days of entry of this Consent Decree, Settling Defendant shall pay to U.S. EPA \$425,000 (four hundred twenty five thousand dollars) in payment for Past Response Costs.

b. Within 45 days of entry of this Consent Decree, Settling Defendant shall pay to U.S. EPA \$25,000 (twenty five thousand dollars) in payment for potential

Future Response Costs related to the Site.

8. The payments shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT instructions provided to Settling Defendant by the Financial Litigation Unit of the U.S. Attorney's Office in the Northern District of Illinois following lodging of the Consent Decree.

9. At the time of the payments, Settling Defendant shall also send notice that the payments have been made to U.S. EPA and U.S. DOJ in accordance with Section XIV (Notices and Submissions) of this Consent Decree. Such notice shall reference the U.S. EPA Region and Site/Spill Identification Number 05MZ, U.S. DOJ case number 90-11-3-08952, and the civil action number.

10. a. The Parties agree that upon entry of this Consent Decree, U.S. EPA shall establish a new Special Account within the U.S. EPA Hazardous Substance Superfund: the Evergreen Manor Reserve Special Account.

b. The \$425,000 to be paid by Settling Defendant pursuant to Paragraph 7.a. shall be transferred by U.S. EPA upon receipt to the already-existing Evergreen Manor Special Account. The \$25,000 to be paid by Settling Defendant pursuant to Paragraph 7.b. shall be transferred by U.S. EPA upon receipt to the newly-created Evergreen Manor Reserve Special Account.

c. U.S. EPA may use all or any portion of the funds in the Evergreen Manor Reserve Special Account and the Evergreen Manor Special Account for any response activities at the Evergreen Manor Site for which Waste and Ecolab are not otherwise responsible for performing or funding under the Waste Management Consent Decree, and which, in the sole discretion of U.S. EPA, are required to protect human

health or the environment. Such use may not be challenged by the Settling Defendant under the Dispute Resolution Provisions of this Consent Decree or in any other forum. Any portion of the funds in the Evergreen Manor Reserve Special Account and the Evergreen Manor Special Account that U.S. EPA does not expend for response actions at the Evergreen Manor Site shall be deposited in the EPA Hazardous Substance Superfund.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

11. Interest on Late Payments. If Settling Defendant fails to make payment under Paragraph 7 (Payment for Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

12. Stipulated Penalty.

a. If any amounts due under Paragraph 7 are not paid by the required date, Settling Defendant shall be in violation of this Consent Decree and shall pay to U.S. EPA, as a stipulated penalty, in addition to the Interest required hereunder, \$2,500 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by U.S. EPA. All payments to U.S. EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashiers check made payable to "U.S. EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the Settling Defendant, the Site name, the U.S. EPA Region and Site Spill ID Number 05MZ, U.S. DOJ Case Number 90-11-3-08952, and the civil action number. Settling Defendant shall send the check (and any accompanying letter) to:

U.S. Environmental Protection Agency, Region 5
Superfund Program Accounting & Analysis Section
P.O. Box 70753
Chicago, Illinois 60673-0753

c. At the time of each payment, Settling Defendant shall also send notice to U.S. EPA and U.S. DOJ that payment has been made in accordance with Section XIV (Notices and Submissions). Such notice shall reference the U.S. EPA Region and Site/Spill ID Number 05MZ, U.S. DOJ Case Number 90-11-3-08952, and the civil action number.

d. Penalties shall accrue as provided in this Paragraph regardless of whether U.S. EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment.

13. If the United States brings an action to enforce this Consent Decree and the Court finds in favor of the United States, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time allowed by the Court.

14. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

15. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from payment as required by Section VI

(Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

VIII. DISPUTE RESOLUTION

16. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce Regal-Beloit's obligations that have not been disputed in accordance with this Section.

17. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of Informal Negotiations between the parties to the dispute. The period for Informal Negotiations shall not exceed 60 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other a written Notice of Dispute.

18. a. In the event that the parties cannot resolve a dispute by Informal Negotiations under the preceding Paragraph, then the position advanced by U.S. EPA shall be considered binding unless within 20 days after the conclusion of the Informal Negotiation period, Regal-Beloit invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendant. The Statement of Position shall specify Regal-Beloit's position as to whether formal dispute resolution should proceed under Paragraph 18(c) or Paragraph 18(d).

b. Within 45 days after receipt of Regal-Beloit's Statement of Position, U.S. EPA will serve on Regal-Beloit its Statement of Position, including, but not limited to, any factual data, analysis or opinion supporting that position and all supporting documentation relied upon by U.S. EPA. U.S. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 18(c) or Paragraph 18(d). Within 30 days after receipt of U.S. EPA's Statement of Position, Regal-Beloit may submit a reply. If there is disagreement between U.S. EPA and Regal-Beloit as to whether dispute resolution should proceed under Subparagraph 18(c) or 18(d), the parties to the dispute shall follow the procedures determined by U.S. EPA to be applicable. However, if Regal-Beloit ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 18(c) and 18(d).

c. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph (c). Nothing in this Consent Decree shall be construed to concede any dispute by Regal-Beloit regarding the validity of any provision in the ROD issued by U.S. EPA for the Site.

i. Administrative Record. U.S. EPA shall maintain an administrative record of the dispute, which shall include but not be limited to the Notice of Objection served by Regal-Beloit, the Notice of Formal Dispute Resolution, the Statements of Position, including supporting documentation, and Regal-Beloit's Reply, if

any, submitted pursuant to this Paragraph. Where appropriate, U.S. EPA may allow submission of supplemental statements of position by the parties to the dispute.

ii. Final Decision. The Director of the Superfund Division, U.S. EPA Region 5, will issue a final administrative decision resolving the dispute based upon the administrative record described in Paragraph 18 (c)(i). This decision shall be binding upon Regal-Beloit and the U.S. EPA, subject only to the right to seek judicial review.

iii. Judicial Review. Any administrative decision made by U.S. EPA pursuant to Paragraph 18(c)(ii) shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendant with the Court and then served on all Parties within 15 days of receipt of U.S. EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to the motion. Any and all such judicial review shall be venued in the Federal Court for the Northern District of Illinois, Western Division.

iv. In proceedings on any dispute governed by this Paragraph 18(c), Settling Defendant shall have the burden, as set forth in Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), of demonstrating, on the administrative record, that the decision of the U.S. EPA was arbitrary and capricious or otherwise not in accordance with law. Judicial review of U.S. EPA's decision shall be on the administrative record compiled pursuant to Paragraph 18(c)(i).

d. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the

administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

i. Following receipt of Regal-Beloit's Statement of Position submitted pursuant to Paragraph 18(a), the Director of the Superfund Division, U.S. EPA Region 5, will issue a final decision resolving the dispute. This decision shall be binding upon Regal-Beloit unless, within 15 days of receipt of U.S. EPA's decision, Regal-Beloit files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree and response action at the Site. The United States may file a response to Regal-Beloit's motion.

ii. Judicial review of any dispute governed by this Paragraph 18(d) shall be governed by applicable principles of administrative law.

e. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Regal-Beloit not directly in dispute, unless U.S. EPA or the Court agrees otherwise.

IX. COVENANT NOT TO SUE BY PLAINTIFF

19. Except as specifically provided in Section X (Reservation of Rights by United States), in consideration of the payment that will be made by the Settling Defendant under the terms of this Consent Decree, the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site, including Past Response Costs and Future Response Costs. With regard to present liability, this

covenant not to sue shall take effect upon receipt by U.S. EPA of all payments required by Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Consent Decree). With regard to future liability this covenant shall take effect upon Certification of Completion of the Remedial Action as provided for in Section XIV of the Waste Management Consent Decree. This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

X. RESERVATION OF RIGHTS BY UNITED STATES

20. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiff in Paragraph 19. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

- a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. liability for costs incurred or to be incurred by the United States that are not within the definitions of Past Response Costs or Future Response Costs and which are sought pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607;
- c. liability for injunctive relief or administrative order for enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606 for matters that are not within the definition of Remedial Action;
- d. criminal liability;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and

f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

21. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants,

a. to perform further response actions relating to the Site, or

b. to reimburse the United States for additional costs or response,

if prior to Certification of Completion of the Remedial Action pursuant to the Waste Management Consent Decree:

(1) conditions at the Site, previously unknown to U.S. EPA are discovered, or

(2) information, previously unknown to U.S. EPA, is received, in whole or in part,

and U.S. EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

22. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, pursuant to Section 122(f)(6) of CERCLA, 42 U.S.C. § 9622(f)(6) the United States reserves and this Consent Decree is without prejudice to, the

right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants,

- a. to perform further response actions relating to the Site, or
- b. to reimburse the United States for additional costs of response,

if subsequent to Certification of Completion of the Remedial Action pursuant to the Waste Management Consent Decree:

(1) conditions at the Site, previously unknown to U.S. EPA are discovered, or

(2) information, previously unknown to U.S. EPA is received, in whole or in part,

and U.S. EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

23. For purposes of Paragraph 21, the information and the conditions known to U.S. EPA shall include only that information and those conditions known to U.S. EPA as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 22, the information and the conditions known to U.S. EPA shall include only that information and those conditions known to U.S. EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by U.S. EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

XI. COVENANT NOT TO SUE BY SETTLING DEFENDANT

24. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the State of Illinois, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

25. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

26. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The Parties expressly reserve any and all rights including, but not limited to, any right to contribution, defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

27. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "Matters Addressed."

28. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify U.S. EPA and U.S. DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify U.S. EPA and U.S. DOJ in writing within 10 days of service of the Complaint or claim upon it. In addition, Settling Defendant shall notify U.S. EPA and U.S. DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

29. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Regal-Beloit shall not assert or maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section XI.

XIII. RETENTION OF RECORDS

30. Until ten (10) years after the entry of this Consent Decree, Settling Defendant shall in good faith act to preserve and retain all records, reports, or information (hereinafter referred to as "records"), now in its possession or control or which come into its possession or control that relate in any manner to the contamination for which Settling Defendant is alleged to be responsible, response actions at the Site or the liability of any person under CERCLA with respect to the Site including but not limited to documents produced to the government pursuant to discovery in the underlying action and those documents not produced but referred to in the privilege log regardless of any corporate retention policy to the contrary. Retention can be by any acceptable document storage method including but not limited to electronic storage of such documents.

31. Settling Defendant may assert business confidentiality claims covering part or all of the records to the extent permitted by and in accordance with § 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7) and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to U.S. EPA, or if EPA has notified Settling Defendant that the records are not confidential under the standards of § 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such records without further notice to Settling Defendant.

32. After the conclusion of the ten (10) year retention period, Settling Defendant shall notify U.S. EPA and U.S. DOJ at least 90 days prior to the destruction of any such records, and upon request by U.S. EPA or U.S. DOJ Settling Defendant shall

deliver any such records to U.S. EPA in the form in which such records were maintained or its equivalent. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by Federal law. If Settling Defendant asserts such a privilege, it shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor. However, no such records created or generated as required by the Consent Decree shall be withheld on the grounds that they are privileged.

33. Settling Defendant hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site, and that it has fully complied with any and all U.S. EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6927.

XIV. NOTICES AND SUBMISSIONS

34. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, U.S. EPA, U.S. DOJ, and Settling Defendant, respectively.

As to the United States:

As to U.S. DOJ:

U.S.P.S. Address:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611

Courier Address:

ENRD Mailroom: Room 2121
601 D Street, N.W.
Washington, D.C. 20004
Re: DJ # 90-11-3-08952

As to U.S. EPA:

William Ryan
U.S. EPA Project Coordinator
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard, SR-6J
Chicago, Illinois 60604

and

John C. Matson
Associate Regional Counsel
Office of Regional Counsel
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard, C-14J

Chicago, Illinois 60604

and

Director, Superfund Division
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

As to the U.S. EPA Regional Financial Management Officer:

United States Environmental Protection Agency
Region 5
Superfund Program Accounting & Analysis Section
77 West Jackson Boulevard
Chicago, Illinois 60604

As to Settling Defendant:

Scott Schneier
Regal-Beloit Corporation
Corporate Office
200 State Street
Beloit, Wisconsin 53511-6254

With a copy to

Richard Porter
Gonzalez Saggio & Harlan, LLP
225 East Michigan Street, 4th Floor
Milwaukee, Wisconsin 53202

XV. RETENTION OF JURISDICTION

35. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVI. INTEGRATION/APPENDIX

36. This Consent Decree and its Appendix constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no

representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following Appendix is attached to and incorporated into this Consent Decree: "Appendix A" is a map of the Site.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

37. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree, without further notice.

38. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVIII. SIGNATORIES/SERVICE

39. The undersigned representative of the Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

40. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the

United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

41. Settling Defendant hereby agrees to withdraw the Motion to Intervene as a Party-Defendant filed on June 27, 2008 in the parallel case of *United States v. Waste Management of Illinois, Inc., et al.*, Civ. No. 08-CV-50094 (N.D. Ill.), and agrees to withdraw its comments and objections to the entry of the Consent Decree in that case. Settling Defendant further agrees that it will not challenge any provision of that Consent Decree, unless the United States has notified Settling Defendant in writing that the United States no longer supports entry of that Consent Decree.

42. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XIX. FINAL JUDGMENT

43. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS _____ DAY OF _____, 2008.

HONORABLE FREDERICK J. KAPALA
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Regal-Beloit Corporation*, No. 07-CV-50002, relating to the Evergreen Manor Groundwater Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 12/27/08

W. BENJAMIN FISHEROW
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division

FRANCIS J. BIROS
GREGORY L. SUKYS
KRISTIN M. FURRIE
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Phone: (202) 616-6552
Fax: (202) 616-6584

PATRICK FITZGERALD
United States Attorney
Northern District of Illinois

Date: 12/18/08

MONICA MALLORY
Assistant United States Attorney
Northern District of Illinois
308 W. State Street
Rockford, IL 61101
Phone: (815) 987-4444

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Regal-Beloit Corporation*, No. 07-CV-50002, relating to the Evergreen Manor Groundwater Superfund Site.

FOR THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

Date: 12-16-08

RICHARD C. KARL
Director
Superfund Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Date: 12-3-08

JOHN C. MATSON
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Regal-Beloit Corporation*, No. 07-CV-50002, relating to the Evergreen Manor Groundwater Superfund Site.

FOR DEFENDANT
REGAL-BELOIT CORPORATION

Date: November 26, 2008

Scott Schneier
Regal-Beloit Corporation
Corporate Office
200 State Street
Beloit Wisconsin 53511-6254

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: National Registered Agents, Inc.

Address: 200 West Adams Street, Suite 2007
Chicago, IL 60606

APPENDIX A

